

## Missouri Attorney General's Opinions - 1998

Opinion	Date	Topic	Summary
<a href="#">75-98</a>	June 25	DEPARTMENT OF MENTAL HEALTH.	Sections 191.229 and 37.503, RSMo 1994, apply to not for profit human services organizations that provide habilitative services or rehabilitative services or both habilitative and rehabilitative services to people with disabilities in this state, and when such an organization has been accredited by the Commission on Accreditation of Rehabilitative Facilities or the Accreditation Council on Services for People with Disabilities, that accreditation shall be deemed in lieu of and recognized as equivalent to any state licensure or certification requirements by the Missouri Department of Mental Health, Division of Alcohol and Drug Abuse, when purchasing services on behalf of persons with disabilities.
<a href="#">80-98</a>	July 9	DEPARTMENT OF PUBLIC SAFETY. SEAT BELTS. TRUCKS.	With respect to the wearing of safety belts in trucks, pursuant to Section 307.178, RSMo Supp. 1997, 1) persons less than eighteen years of age operating or riding in a truck on a street or highway of this state, regardless of gross weight of the truck and regardless of whether in the front or second (back) seat of the truck and regardless of the date of manufacturing of the truck, are required to wear a properly adjusted and fastened safety belt, with exceptions for children less than 4 years of age, persons who have a medical reason for failing to have a seat belt fastened about their body, and certain persons involved in agricultural work-related activities, and 2) persons eighteen years of age or older are required to wear a properly adjusted and fastened safety belt when a driver or front seat passenger in a truck with a licensed gross weight of less than twelve thousand pounds that was manufactured after Jan. 1, 1968, operated on a street or highway in this state, with exceptions for certain employees of the United States Postal Service, persons who have a medical reason for failing to have a seat belt fastened about their body, and certain persons involved in agricultural work-related activities.
<a href="#">92-98</a>	July 23	ANNUAL LEAVE. LABOR AND INDUSTRIAL RELATIONS, DEPARTMENT OF. SICK LEAVE. STATE OFFICERS. WORKERS' COMPENSATION.	Administrative law judges and legal advisors whose annual salary is specified in Section 287.615, RSMo 1994, are not paid accrued annual leave on termination of such employment, do not accumulate annual leave or sick leave under Section 36.350, RSMo 1994, and are entitled to the statutory salary regardless of the number of hours worked.

<a href="#">100-98</a>	Apr 14	COORDINATING BOARD FOR HIGHER EDUCATION. DEPARTMENT OF ELEMENTARY AND SECONDARY EDUCATION. SCHOOLS. SCHOOL AID. STATE COLLEGES.	For purposes of subsection 5 of Section 160.545, RSMo 1994, the West Plains Campus of Southwest Missouri State University is "any public community college or vocational or technical school" and entitled to reimbursement of the cost of tuition, books and fees as provided in that section.
<a href="#">103-98</a>	Jan 21	INITIATIVES.	Review and rejection pursuant to Section 116.332, RSMo Supp. 1997, of the sufficiency as to form of an initiative petition relating to the amendment of Article I of the Missouri Constitution by adopting on new section to be known as Section 33.
<a href="#">104-98</a>	Jan 22	INITIATIVES.	Review and rejection pursuant to Section 116.332, RSMo Supp. 1997, of the sufficiency as to form of an initiative petition proposing the following language: "The constitution of Missouri will recognize that person hood and humane life begins at and exist at the embryonic stage."
<a href="#">110-98</a>	Feb 13	INITIATIVES.	Review and rejection pursuant to Section 116.332, RSMo Supp. 1997, of the sufficiency as to form of an initiative petition apparently proposing a constitutional amendment to read: "The constitution of Missouri will recognize that personhood and humane life exist at the embryonic stage."
<a href="#">111-98</a>	Feb 13	INITIATIVES.	Review and approval pursuant to Section 116.332, RSMo Supp. 1997, of the sufficiency as to form of an initiative petition relating to a proposed law concerning campaign finance.
<a href="#">113-98</a>	Feb 24	INITIATIVES.	Review and approval pursuant to Section 116.332, RSMo Supp. 1997, of the sufficiency as to form of an initiative petition relating to the amendment of Article I of the Missouri Constitution by adopting one new section to be known as Section 33.
<a href="#">115-98</a>	Mar 3	INITIATIVES.	Review and approval of legal content and form of a summary statement prepared pursuant to Section 116.334, RSMo Supp. 1997, regarding an initiative petition relating to a proposed law concerning campaign finance.
<a href="#">116-98</a>	Mar 6	INITIATIVES.	Review and approval of legal content and form of a fiscal note and fiscal note summary prepared pursuant to Section 116.175, RSMo Supp. 1997, regarding an initiative petition relating to a proposed law concerning campaign finance.
<a href="#">118-98</a>	Mar 6	INITIATIVES.	Review and approval of legal content and form of a fiscal note and

			fiscal note and fiscal note summary prepared pursuant to Section 116.175, RSMo Supp. 1997, regarding an initiative petition relating to the amendment of Article I of the Missouri Constitution by adopting one new section to be known as Section 33.
<a href="#">120-98</a>	Mar 16	INITIATIVES.	Review and approval of legal content and form of a summary statement prepared pursuant to Section 116.334, RSMo Supp. 1997, regarding an initiative petition relating to the amendment of Article I of the Missouri Constitution by adopting one new section to be known as Section 33.
<a href="#">124-98</a>	Mar 23	INITIATIVES.	Review and approval pursuant to Section 116.332, RSMo Supp. 1997, of the sufficiency as to form of an initiative petition relating to the amendment of Section 39(e) of Article III of the Missouri Constitution concerning riverboat gambling.
<a href="#">128-98</a>	Dec 1	COMMERCIAL MOTOR VEHICLES. DEPARTMENT OF PUBLIC SAFETY. HIGHWAY PATROL. WEIGHT LIMIT ENFORCEMENT.	(1) Commercial vehicle enforcement officers are authorized by subsection 4(3) of Section 304.230, RSMo, as amended by House Bill No. 1802, 89th General Assembly, Second Regular Session (1998), to make arrests for violations of those offenses referred to in subdivisions (1) and (2) of subsection 4 of Section 304.230, (2) the authority of commercial vehicle enforcement officers under subsection 4(3) of Section 304.230 to make arrests upon warrants refers only to arrests upon warrants relating to violations of subdivisions (1) and (2) of subsection 4 of Section 304.230, (3) commercial vehicle enforcement officers are not prohibited by Section 571.030, RSMo, as amended by Senate Substitute for Senate Bill No. 478, 89th General Assembly, Second Regular Session (1998), from carrying concealed weapons, and (4) commercial vehicle enforcement officers may make arrests for violations of Sections 303.024 and 303.025, RSMo, relating to proof of insurance.
<a href="#">129-98</a>	Apr 1	INITIATIVES.	Review and approval pursuant to Section 116.332, RSMo Supp. 1997, of the sufficiency as to form of an initiative petition relating to the amendment of Section 39(e) of Article III of the Missouri Constitution concerning riverboat gambling.
<a href="#">130-98</a>	Apr 1	INITIATIVES.	Review and approval of legal content and form of a summary statement prepared pursuant to Section 116.334, RSMo Supp. 1997, regarding an initiative petition relating to the amendment of Section 39(e) of Article III of the Missouri Constitution concerning riverboat gambling.
<a href="#">131-98</a>	Apr 10	INITIATIVES.	Review and approval of legal content and form of a fiscal note and fiscal note and fiscal note summary prepared pursuant to Section 116.175, RSMo Supp. 1997, regarding an initiative petition relating to the amendment of Section 39(e) of Article III of the Missouri

			Constitution concerning riverboat gambling.
<a href="#">135-98</a>	May 1	INITIATIVES.	Review and rejection pursuant to Section 116.332, RSMo Supp. 1997, of the sufficiency as to form of an initiative petition proposing a constitutional amendment to read: "The constitution of Missouri recognizes that personhood and humane life exist at the embryonic stage."
<a href="#">138-98</a>	July 9	CONFLICT OF INTEREST. GAMBLING. MISSOURI GAMING COMMISSION.	There is no violation of Section 313.004.10, RSMo 1994, when a person employed by an excursion gambling boat is elected and serves as a member of the board of directors of an ambulance district.
<a href="#">141-98</a>	June 26	BALLOTS. REFERENDUM.	Review and approval of legal content and form of a fiscal note and fiscal note summary prepared pursuant to Section 116.175, RSMo Supp. 1997, relating to House Committee Substitute for Senate Committee Substitute for Senate Joint Resolution No. 24, 89 <sup>th</sup> General Assembly, Second Regular Session (1998).
<a href="#">142-98</a>	June 26	BALLOTS. REFERENDUM.	Review and approval of legal content and form of a summary statement prepared pursuant to Section 116.160, RSMo, relating to House Committee Substitute for Senate Committee Substitute for Senate Joint Resolution No. 24, 89 <sup>th</sup> General Assembly, Second Regular Session (1998).
<a href="#">147-98</a>	July 23	BALLOTS. REFERENDUM.	Review and approval of legal content and form of a fiscal note and fiscal note summary prepared pursuant to Section 116.175, RSMo Supp. 1997, relating to Senate Substitute #2 for House Joint Resolution No. 39, 89 <sup>th</sup> General Assembly, Second Regular Session (1998).
<a href="#">148-98</a>	July 23	BALLOTS. REFERENDUM.	Review and approval of legal content and form of a summary statement prepared pursuant to Section 116.160, RSMo, relating to Senate Substitute #2 for House Joint Resolution No. 39, 89 <sup>th</sup> General Assembly, Second Regular Session (1998).
<a href="#">153-98</a>	Dec 1	COPIES. PUBLIC RECORDS. SUNSHINE LAW.	If county records are on microfilm, the county has the ability to duplicate the microfilm, and a request is made for a copy of the records in the form of microfilm, the county is obligated pursuant to Section 610.026, RSMo, as amended by Conference Committee Substitute No. 2 for Senate Substitute for Senate Committee Substitute for House Substitute for House Committee Substitute for House Bill No. 1095, 89 <sup>th</sup> General Assembly, Second Regular Session (1998) to provide a copy of the records in the form of microfilm.
<a href="#">168-98</a>	Nov 19	INITIATIVES.	Review and rejection pursuant to Section 116.332, RSMo Supp. 1997, of the sufficiency as to form of an initiative petition proposing that the

			Missouri Constitution be amended by adding one new section to provide that persons elected to represent Missouri in the United States House of Representatives or Senate shall not support a governmental budget that spends in deficit.
<a href="#">176-98</a>	Dec 24	INITIATIVES.	Review and rejection pursuant to Section 116.332, RSMo Supp. 1997, of the sufficiency as to form of an initiative petition proposing that the Missouri Constitution be amended by adding one new section to provide that persons elected to represent Missouri in the United States House of Representatives or Senate shall not support a governmental budget that spends in deficit

MENTAL HEALTH, DEPARTMENT OF: Sections 191.229 and 37.503, RSMo 1994, apply to not for profit human services organizations that provide habilitative services or rehabilitative services or both habilitative and rehabilitative services to people with disabilities in this state, and when such an organization has been accredited by the Commission on Accreditation of Rehabilitative Facilities or the Accreditation Council on Services for People with Disabilities, that accreditation shall be deemed in lieu of and recognized as equivalent to any state licensure or certification requirements by the Missouri Department of Mental Health, Division of Alcohol and Drug Abuse, when purchasing services on behalf of persons with disabilities.

June 25, 1998

OPINION NO. 75-98

The Honorable W. Craig Hosmer  
State Representative, District 138  
State Capitol Building  
Jefferson City, MO 65101

Dear Representative Hosmer:

This opinion is in response to your question asking:

Since the General Assembly's enactment of Senate Bill 672 (Second Regular Session 1994), codified at R.S.Mo. Sec. 191.229 (1996), does the Missouri Department of Mental Health, Division of Alcohol and Drug Abuse (hereinafter, respectively, "the Department" and "the Division"), retain the legal authority to certify private, not-for-profit agencies providing rehabilitation services under contract with the state, if such agencies are also accredited by the Commission on Accreditation of Rehabilitative Facilities (hereinafter, "C.A.R.F.") ?

Section 191.229, RSMo 1994, to which you refer in your question, provides:

**191.229. Accreditation of not for profit human services organizations deemed equivalent to licensure.**--When a not for profit human services organization providing habilitative and rehabilitative services to people with disabilities in this state has been accredited by the Commission on Accreditation of Rehabilitative Facilities or the Accreditation Council on Services for People with Disabilities, that specific accreditation shall be deemed in lieu of and recognized as equivalent to any state licensure or certification requirements by all state agencies when purchasing services on behalf of persons with disabilities.  
[Emphasis added.]

Section 191.229 was enacted as part of Senate Committee Substitute for Senate Bill No. 672, 87th General Assembly, Second Regular Session (1994).

Sections 37.500 and 37.503 address the same topic as Section 191.229 and were enacted at the same session of the General Assembly as part of Conference Committee Substitute for Senate Committee Substitute for House Substitute for House Committee Substitute for House Bills Nos. 1547 & 961 (1994). Sections 37.500 and 37.503 provide:

**37.500. Central registry, office of administration duties.**--The office of administration shall establish a central registry in which accredited not for profit human service providers may submit confirmation of accreditation by a nationally recognized accrediting body and related information. The office of administration shall issue a vendor number to be recognized for state purchasing.

**37.503. National accreditation recognized as equivalent to state licensure.**--When a not for profit human services organization providing habilitative and rehabilitative services to people with disabilities in the state of Missouri has been accredited by the Commission on Accreditation of Rehabilitation Facilities or the Accreditation Council on Services for People with Disabilities, that specific

accreditation shall be recognized in lieu of and as an equivalent to any state licensure or certification requirements by all state agencies when purchasing services on behalf of persons with disabilities. [Emphasis added.]<sup>1</sup>

From reviewing the information you provided with your opinion request, it appears the legal issue to be resolved is whether not for profit human services organizations must provide both habilitative and rehabilitative services in order for Section 191.229 (and likewise Section 37.503) to apply or whether the section applies to not for profit human services organizations which provide only habilitative services or only rehabilitative services but not both.

In addressing this issue, we must determine if the word "and" connecting "habilitative" and "rehabilitative" should be interpreted to mean "or." "The primary rule [of statutory construction] to be observed is to ascertain the intention of the lawmakers . . . . [T]he word 'and' is often construed to mean 'or,' and vice versa." City of St. Louis v. Consolidated Products Co., 185 S.W.2d 344, 346 (Mo. App. 1945). See also Brollier v. Van Alstine, 163 S.W.2d 109, 116 (Mo. App. 1942) ("cure and relieve" means "cure or relieve"); City of Kansas City v. Grush, 52 S.W. 286, 287 (Mo. 1899) ("commission merchants and produce dealers" means "commission merchants or produce dealers").

The apparent intent of Sections 191.229 and 37.503 is to eliminate the need for certain not for profit human services organizations to undergo multiple licensures or certifications before contracting with state agencies to provide services on behalf of persons with disabilities. Accreditation by one of the two accrediting organizations named in the statutes is to be in lieu of state certification or licensing by any state agency when purchasing services on behalf of persons with disabilities. To read the statutes so narrowly as to only apply the statutes to not for profit human services organizations that provide both habilitative and rehabilitative services would not be consistent with the apparent legislative intent. Therefore, we conclude that Sections 191.229 and 37.503 apply to not for profit human services organizations that provide

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<sup>1</sup>Section 191.229 refers to the Commission on Accreditation of Rehabilitative Facilities while Section 37.503 refers to the Commission on Accreditation of Rehabilitation Facilities. It is obvious that both sections refer to the same accrediting organization despite the slight variation in name.



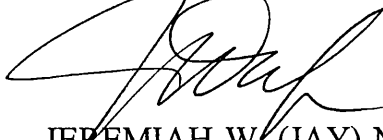
The Honorable W. Craig Hosmer  
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only habilitative services or only rehabilitative services or both habilitative and rehabilitative services to people with disabilities in this state.

CONCLUSION

It is the opinion of this office that Sections 191.229 and 37.503, RSMo 1994, apply to not for profit human services organizations that provide habilitative services or rehabilitative services or both habilitative and rehabilitative services to people with disabilities in this state, and when such an organization has been accredited by the Commission on Accreditation of Rehabilitative Facilities or the Accreditation Council on Services for People with Disabilities, that accreditation shall be deemed in lieu of and recognized as equivalent to any state licensure or certification requirements by the Missouri Department of Mental Health, Division of Alcohol and Drug Abuse, when purchasing services on behalf of persons with disabilities.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Jay Nixon', is written over the typed name.

JEREMIAH W. (JAY) NIXON  
Attorney General

DEPARTMENT OF PUBLIC SAFETY:  
SEAT BELTS:  
TRUCKS:

With respect to the wearing of safety  
belts in trucks, pursuant to Section  
307.178, RSMo Supp. 1997, 1) persons  
less than eighteen years of age

operating or riding in a truck on a street or highway of this state, regardless of gross weight of the truck and regardless of whether in the front or second (back) seat of the truck and regardless of the date of manufacturing of the truck, are required to wear a properly adjusted and fastened safety belt, with exceptions for children less than four years of age, persons who have a medical reason for failing to have a seat belt fastened about their body, and certain persons involved in agricultural work-related activities, and 2) persons eighteen years of age or older are required to wear a properly adjusted and fastened safety belt when a driver or front seat passenger in a truck with a licensed gross weight of less than twelve thousand pounds that was manufactured after January 1, 1968, operated on a street or highway in this state, with exceptions for certain employees of the United States Postal Service, persons who have a medical reason for failing to have a seat belt fastened about their body, and certain persons involved in agricultural work-related activities.

July 9, 1998

OPINION NO. 80-98

Gary B. Kempker, Director  
Department of Public Safety  
P.O. Box 749  
Jefferson City, MO 65102

Dear Director Kempker:

This opinion is in response to your question asking:

Who is required to wear a safety belt in a truck?  
(What ages does this apply to and what licensed gross  
weight of truck?)

Your question apparently arises because of a possible conflict between subsection 1 and subsection 2 of Section 307.178, RSMo Supp. 1997. Section 307.178 provides:

**307.178. Seat belts required for passenger cars--  
passenger cars defined--exceptions--failure to comply,  
effect on evidence and damages--penalty--passengers in  
car exceeding number of seat belts not violation for  
failure to use. --1.** As used in this section, the term  
**"passenger car"** means every motor vehicle designed for  
carrying ten persons or less and used for the transportation  
of persons; except that, the term "passenger car" shall not  
include motorcycles, motorized bicycles, motor tricycles and  
trucks with a licensed gross weight of twelve thousand  
pounds or more.

2. Each driver, except persons employed by the  
United States Postal Service while performing duties for  
that federal agency which require the operator to service  
postal boxes from their vehicles, or which require frequent  
entry into and exit from their vehicles, and front seat  
passenger of a passenger car manufactured after January 1,  
1968, operated on a street or highway in this state, and  
persons less than eighteen years of age operating or riding  
in a truck, as defined in section 301.010, RSMo, on a street  
or highway of this state shall wear a properly adjusted and  
fastened safety belt that meets federal National Highway,  
Transportation and Safety Act requirements; except that, a  
child less than four years of age shall be protected as  
required in section 210.104, RSMo. No person shall be  
stopped, inspected, or detained solely to determine  
compliance with this subsection. The provisions of this  
section shall not be applicable to persons who have a  
medical reason for failing to have a seat belt fastened about  
their body, nor shall the provisions of this section be  
applicable to persons while operating or riding a motor  
vehicle being used in agricultural work-related activities.  
Noncompliance with this subsection shall not constitute  
probable cause for violation of any other provision of law.

3. Each driver of a motor vehicle transporting a  
child four years of age or more, but less than sixteen years

of age, shall secure the child in a properly adjusted and fastened safety belt.

\* \* \*

5. Each driver who violates the provisions of subsection 2 or 3 of this section is guilty of an infraction for which a fine not to exceed ten dollars may be imposed. All other provisions of law and court rules to the contrary notwithstanding, no court costs shall be imposed on any person due to a violation of this section. In no case shall points be assessed against any person, pursuant to section 302.302, RSMo, for a violation of this section.

\* \* \*

7. If there are more persons than there are seat belts in the enclosed area of a motor vehicle, then the driver and passengers are not in violation of this section. [Emphasis added.]

Section 301.010, RSMo Supp. 1997, defines "truck" in subsection 58 as follows:

(58) "**Truck**", a motor vehicle designed, used, or maintained for the transportation of property;

Subsection 1 of Section 307.178 contains a reference to "trucks with a licensed gross weight of twelve thousand pounds or more" while subsection 2 refers to "a truck, as defined in section 301.010, RSMo." The difference between these two subsections apparently prompts your question.

In addressing your question, we first consider the statutory provisions applicable to persons less than eighteen years of age. A provision in subsection 2 of Section 307.178 specifically applies to persons less than eighteen years of age: "persons less than eighteen years of age operating or riding in a truck, as defined in section 301.010, RSMo, on a street or highway of this state shall wear a properly adjusted and fastened safety belt . . . ." Where general provisions in one part of a statute are inconsistent with specific or particular provisions in another part, the particular provisions must

govern. State ex rel. City of Kirkwood v. Smith, 210 S.W.2d 46, 48 (Mo. banc 1948). Therefore, in considering the requirements for persons less than eighteen years of age, we follow the particular provision applicable to those persons.

The provision addressing persons less than eighteen years of age refers to a truck as defined in Section 301.010. That section defines "truck" as a motor vehicle designed, used, or maintained for the transportation of property. Such definition contains no reference to licensed gross weight. When considering persons less than eighteen years of age, licensed gross weight of the truck is irrelevant. Furthermore, the provision refers to "operating or riding in a truck" such that it is irrelevant whether the person less than eighteen years of age is in the front seat or the second (back) seat of a truck. This provision also makes no distinction regarding the date of manufacturing of the truck. So whether the truck was manufactured before or after January 1, 1968, is irrelevant under the statute when dealing with persons less than eighteen years of age. Therefore, a person less than eighteen years of age operating or riding in a truck, regardless of gross weight and regardless of whether in the front or second (back) seat of the truck and regardless of the date of manufacturing of the truck, is required to wear a safety belt, with certain exceptions.

In looking at the exceptions for persons less than eighteen years of age, there is a specific exception stating "a child less than four years of age shall be protected as required in section 210.104, RSMo." Subsection 2 of Sections 307.178 further provides that such section "shall not be applicable to persons who have a medical reason for failing to have a seat belt fastened about their body, nor shall the provisions of this section be applicable to persons while operating or riding a motor vehicle being used in agricultural work-related activities." These exceptions would apply to persons less than eighteen years of age.

We next consider the statutory provisions applicable to persons eighteen years of age or older. Subsection 2 requires each driver and front seat passenger of a passenger car manufactured after January 1, 1968, operated on a street or highway in this state to wear a safety belt, with certain exceptions. Subsection 1 of Section 307.178 defines "passenger car" to not include trucks with a licensed gross weight of twelve thousand pounds or more. The term "passenger car" therefore includes trucks with a licensed gross weight of less than twelve thousand pounds. Because "passenger car" includes trucks with a licensed gross weight of less than twelve thousand pounds, each driver and front seat passenger in a truck with a licensed gross weight of less than twelve thousand pounds operated on a street or highway in this state is required to

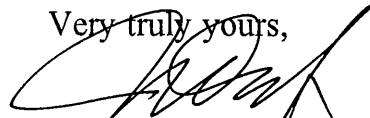
wear a safety belt, with certain exceptions. For those trucks with a licensed gross weight of less than twelve thousand pounds and containing both a front seat and a second (back) seat, there is no requirement for passengers in the second (back) seat to wear a safety belt. Likewise for those trucks with a licensed gross weight of less than twelve thousand pounds which were manufactured before January 1, 1968, there is no requirement for even the driver or front seat passenger to wear a safety belt.

With regard to the exceptions for persons eighteen years of age and older, subsection 2 contains a specific exception for certain employees of the United States Postal Service. Also relevant is the provision in subsection 2 stating: "The provisions of this section shall not be applicable to persons who have a medical reason for failing to have seat belt fastened about their body, nor shall the provisions of this section be applicable to persons while operating or riding a motor vehicle being used in agricultural work-related activities." These exceptions would apply to persons eighteen years of age or older.

#### CONCLUSION

It is the opinion of this office that, with respect to the wearing of safety belts in trucks, pursuant to Section 307.178, RSMo Supp. 1997, 1) persons less than eighteen years of age operating or riding in a truck on a street or highway of this state, regardless of gross weight of the truck and regardless of whether in the front or second (back) seat of the truck and regardless of the date of manufacturing of the truck, are required to wear a properly adjusted and fastened safety belt, with exceptions for children less than four years of age, persons who have a medical reason for failing to have a seat belt fastened about their body, and certain persons involved in agricultural work-related activities, and 2) persons eighteen years of age or older are required to wear a properly adjusted and fastened safety belt when a driver or front seat passenger in a truck with a licensed gross weight of less than twelve thousand pounds that was manufactured after January 1, 1968, operated on a street or highway in this state, with exceptions for certain employees of the United States Postal Service, persons who have a medical reason for failing to have a seat belt fastened about their body, and certain persons involved in agricultural work-related activities.

Very truly yours,



JEREMIAH W. (JAY) NIXON  
Attorney General

ANNUAL LEAVE: Administrative law judges and legal  
LABOR AND INDUSTRIAL RELATIONS, advisors whose annual salary is  
DEPARTMENT OF: specified in Section 287.615, RSMo  
SICK LEAVE: 1994, are not paid accrued annual  
STATE OFFICERS: leave on termination of such  
WORKERS' COMPENSATION: employment, do not accumulate annual  
leave or sick leave under Section  
36.350, RSMo 1994, and are entitled to the statutory salary regardless of the number of  
hours worked.

July 23, 1998

OPINION NO. 92-98

Karla M. McLucas, Director  
Department of Labor and Industrial Relations  
P.O. Box 504  
Jefferson City, Missouri 65102-0504

Dear Director McLucas:

This opinion is in response to your questions asking:

1. Do Administrative Law Judges (ALJs) for the Missouri Department of Labor and Industrial Relations, Division of Workers' Compensation, employed pursuant to Section 287.610 RSMo, and compensated pursuant to § 287.615, accrue annual and sick leave pursuant to the regulations authorized by § 36.350 RSMo? If so, is the use of the leave subject to the regulations authorized by § 36.350? If ALJs do not accrue leave, are they paid the statutory salary without regard to the number of hours worked?
2. When an ALJ resigns can she/he be paid for accrued annual leave?
3. Are the answers to the above questions the same for Legal Advisors employed by the Missouri Department of Labor and Industrial Relations, Division of Workers' Compensation?

Sections 287.610, 287.615 and 287.616, RSMo 1994, describe the administrative law judges and legal advisors who are the subject of your questions. Such sections provide, in relevant part:

**287.610. Administrative law judges, appointment and qualification--removal, review committee, process--jurisdiction, powers--continuing training required.--1.**

The division may appoint such number of administrative law judges as it may find necessary, but not exceeding twenty in number, who shall be duly licensed lawyers under the laws of this state. Administrative law judges shall not practice law or do law business and shall devote their whole time to the duties of their office. Any administrative law judge may be discharged or removed only by the governor, based upon review by the department, pursuant to an evaluation by the administrative law judge review committee of the judge's conduct, performance and productivity. The administrative law judge review committee shall be composed of . . . . Upon a signed written letter of complaint, the administrative law judge review committee may institute a review, without the direction of the director of the department, of an administrative law judge and submit its findings to the governor.

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**287.615. Employees of division--compensation--selection.--1.** The division may appoint or employ such persons as may be necessary to the proper administration of this chapter. All salaries to clerical employees shall be fixed by the division and approved by the labor and industrial relations commission. The annual salary of each legal advisor, administrative law judge, administrative law judge in charge, and chief legal advisor shall be as follows:

- (1) For each legal advisor, forty-one thousand dollars;
- (2) For each chief legal advisor, forty-three thousand



dollars;

(3) For each administrative law judge, forty-eight thousand dollars;

(4) For each administrative law judge in charge, fifty-one thousand dollars.

2. In addition to the compensation specified in subsection 1 of this section, such employees shall receive any salary adjustment provided pursuant to section 105.005, RSMo.

\* \* \*

**287.616. Legal advisors to act as associate administrative law judges, when, powers.--**1. Legal advisors shall act in the capacity of associate administrative law judges with the power to approve agreements of settlement or compromise entered into pursuant to section 287.390.

2. Legal advisors shall also act in the capacity of associate administrative law judges in those offices having only one administrative law judge and shall have jurisdiction to hear and determine claims upon original hearing. With respect to original hearings the legal advisor shall have such jurisdiction and powers as are vested in the division of workers' compensation under other sections of this chapter.

Section 36.350, RSMo 1994, to which you refer in your questions, provides:

**36.350. Sick and annual leaves--regulations to apply to all state agencies.--**The regulations shall provide for the hours of work, holidays, attendance, and leaves of absence in the various classes of positions subject to this law. They shall contain provisions for annual leave, sick leave, and special leaves of absence, with or without pay, or

with reduced pay, and may allow special extended leaves for employees disabled through injury or illness arising out of their employment, and the accumulation of annual leave and sick leave. Such regulations shall apply in all state agencies.

The regulation relating to annual leave and sick leave, 1 CSR 20-5.020, contains provisions relating to earning and accumulating annual leave and sick leave. For example, in most instances full-time employees with less than 10 years of state service earn 10 hours of annual leave and 10 hours of sick leave for each calendar month of service. Employees may accumulate annual leave up to 24 times the employee's monthly accrual rate and may accumulate sick leave without limit.

In Missouri Attorney General Opinion No. 209-83, a copy of which is enclosed, this office considered whether certain state department heads were entitled to payment for annual leave benefits. The department heads' salary was specified by statute as "an annual salary of forty thousand dollars." In concluding that such department heads were not entitled to payment of accrued annual leave upon termination as department director, this office stated:

The right of public officers to compensation is purely a creature of statute, and such compensation statutes are strictly construed against the public officer.

\* \* \*

Strictly construed, as Missouri appellate decisions require, this statute [providing an annual salary of forty thousand dollars] creates a right of compensation of a certain amount of money. The statute mentions nothing of annual leave benefits. If the heads of departments were entitled to compensation for annual leave benefits, their compensation would, in our opinion, exceed the statutory rate specified by the General Assembly.

Id. at pp 3-4.

Your inquiry relates to administrative law judges and legal advisors whose

annual salaries are specified in Section 287.615.<sup>1</sup> With annual salaries specified by statute, as in the situation considered in Opinion No. 209-83, any compensation for accrued annual leave would result in the annual compensation exceeding the statutory rate. Therefore, we conclude that administrative law judges and legal advisors are not paid accrued annual leave on termination of such employment.

With regard to the accumulation of annual and sick leave, in Opinion No. 90-83, a copy of which is enclosed, this office concluded that officers who are compensated at specific rates pursuant to statute do not accumulate sick leave pursuant to Section 36.350, RSMo. The opinion dealt with court reporters whose annual salary was specified by statute. In concluding court reporters do not earn sick leave, this office stated:

Strictly construed, as Missouri appellate decisions require, this statute creates a right of compensation of a certain amount of money. Nothing is mentioned about annual or sick leave benefits. If official court reporters were entitled to compensation for annual or sick leave benefits, their compensation would improperly exceed the statutory rate specified by the General Assembly.

Id. at pp. 4-5. Similarly, because administrative law judges and legal advisors are compensated at a specific statutory rate, we conclude they do not accumulate annual or sick leave under Section 36.350.

You also inquire if administrative law judges and legal advisors receive their statutory salary regardless of the number of hours worked. In State ex rel. Vossbrink v. Carpenter, 388 S.W.2d 823 (Mo. banc 1965), the Missouri Supreme Court held that county school superintendents were entitled to the compensation provided by statute for certain transportation and budget duties even in those counties where superintendents had no duties with respect to transportation or budgets. The Court stated:

[T]here is no claim that these superintendents have

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<sup>1</sup> In addition to the annual amounts specified in subsection 1 of Section 287.615, subsection 2 authorizes salary adjustments pursuant to Section 105.005, RSMo 1994. The adjustments pursuant to Section 105.005 are unrelated to the questions posed in your opinion request and are based primarily on the percentage increase in personal income of Missouri.

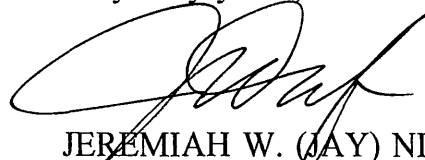
abandoned their office, and "the fact that he does not perform all or any of its duties will not affect his right to the salary attached thereto unless a statute otherwise provides." [Citations omitted.] If, as it must be conceded, the sums involved here are salary "the annual amount of such salary . . . is fixed by the Legislature and no other officer or officers have authority to change it, either before or after it is due and payable." [Citation omitted.] The General Assembly could have attached conditions to the superintendents' right to receive additional compensation but it did not do so.

Id. at 826-827. See also Missouri Attorney General Opinion Letter No. 525, Phillips, 1969, a copy of which is enclosed. In the situation about which you are concerned, Section 287.615 provides an annual salary for administrative law judges and legal advisors. The statute attaches no conditions to receipt of the annual salary, such as working a specified number of hours. Further, there is no provision authorizing any other officer to change the salary. Pursuant to the statute, administrative law judges and legal advisors are entitled to the statutory salary regardless of the number of hours worked.

#### CONCLUSION

It is the opinion of this office that administrative law judges and legal advisors whose annual salary is specified in Section 287.615, RSMo 1994, are not paid accrued annual leave on termination of such employment, do not accumulate annual leave or sick leave under Section 36.350, RSMo 1994, and are entitled to the statutory salary regardless of the number of hours worked.

Very truly yours,



JEREMIAH W. (JAY) NIXON  
Attorney General

Enclosures

COORDINATING BOARD FOR  
HIGHER EDUCATION:  
DEPARTMENT OF ELEMENTARY  
AND SECONDARY EDUCATION:  
SCHOOLS:  
SCHOOL AID:  
STATE COLLEGES:

For purposes of subsection 5 of Section 160.545, RSMo 1994, the West Plains Campus of Southwest Missouri State University is "any public community college or vocational or technical school" and entitled to reimbursement of the cost of tuition, books and fees as provided in that section.

April 14, 1998

OPINION NO. 100-98

The Honorable Michael J. Lybyer  
State Senator, District 16  
State Capitol Building  
Jefferson City, MO 65101

and

The Honorable Lawrence (Doyle) Childers  
State Senator, District 29  
State Capitol Building  
Jefferson City, MO 65101

Dear Senator Lybyer and Senator Childers:

This opinion is in response to your question asking:

Is the West Plains Campus of Southwest Missouri State University eligible for reimbursement for the costs of tuition, books and fees to public community colleges, vocational or technical schools, as provided in Section 160.545.5 of the Revised Statutes of Missouri?

The West Plains Campus of Southwest Missouri State University is described in Section 174.500, RSMo 1994, as follows:

**174.500. West Plains campus of Southwest Missouri State University established--mission implementation plan.--1.** The board of regents of Southwest Missouri State University is authorized to

continue the program of higher education at West Plains, Missouri, which was begun in 1963 and which shall be known as the "West Plains Campus of Southwest Missouri State University". Southwest Missouri State University may include an appropriation request for the branch facility at West Plains in its operating budget.

2. The coordinating board for higher education in cooperation with the board of regents shall develop a mission implementation plan for the campus at West Plains, Howell County, which is known as the "West Plains Campus of Southwest Missouri State University", and which shall be a teaching institution, offering one-year certificates, two-year associate degrees and credit and noncredit courses to both traditional and nontraditional students to meet the ongoing and emerging employer and educational needs of the citizens of the area served.

Section 160.545, RSMo 1994<sup>1</sup>, establishes within the Department of Elementary and Secondary Education the "A+ Schools Program." Subsection 5 of Section 160.545 provides:

5. Within the amount appropriated for the program, in addition to the grants to public schools authorized by subsections 1 to 3 of this section, the commissioner of education shall, by rule and regulation of the state board of education and with the advice of the coordinating board for higher education, establish a procedure for the reimbursement of the cost of tuition, books and fees to any public community college or vocational or technical school for any student:

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<sup>1</sup>Section 160.545 was enacted as Section 14 of Section A of Senate Bill No. 380, 87th General Assembly, First Regular Session (1993). In Akin v. Director of Revenue, 934 S.W.2d 295 (Mo. banc 1996), the Missouri Supreme Court held the provisions of Section A of Senate Bill No. 380 to be constitutional and severable from the unconstitutional provisions of Sections B, C and D of the bill.

(1) Who has attended a public high school in the state for at least three years immediately prior to graduation that meets the requirements of subsection 2 of this section; and

(2) Who has made a good faith effort to first secure all available federal sources of funding that could be applied to the reimbursement described in this subsection; and

(3) Who has earned a minimal grade average while in high school as determined by rule of the state board of education, and other requirements for the reimbursement authorized by this subsection as determined by rule and regulation of said board. [Emphasis added.]

Subsection 5 refers to "any public community college or vocational or technical school." The issue to be addressed is whether the West Plains Campus of Southwest Missouri State University is deemed "any public community college or vocational or technical school" for purposes of the benefits authorized by subsection 5 of Section 160.545.

To assist in determining if the West Plains Campus is "any public community college or vocational or technical school" for purposes of subsection 5 of Section 160.545, you have provided the following information.

The West Plains Campus is separately accredited by the North Central Association for the granting of associate degrees, . . . .

The West Plains Campus currently offers an Associate of Arts Degree in General Education, an Associate of Science Degree in Nursing, and Associate of Applied Science Degrees in Business, Drafting Technology, Manufacturing Machine Technology, Paralegal Studies and Welding Technology. The West Plains Campus offers courses in the liberal arts and sciences, including general education, as well as occupational and vocational-technical.

Courses are offered by SMSU faculty as well as in coordination with local area vocational-technical schools.

\* \* \*

Course offerings lead to the granting of seven associate degrees including Associate of Arts, Associate of Science, and Associate of Applied Science. The campus does not offer baccalaureate or higher degrees.

The West Plains Campus derives financial resources from state appropriations, student fees, federal student aid programs including Pell Grants and Stafford Loan Program, and local contributions. Student fees are paid by the student population, which is currently 35.8 percent from the City of West Plains, 49.3 percent from Howell County and 94.1 percent from the seven-county area constituting Howell and the six neighboring counties. Since establishment of the campus in 1963, the City of West Plains and the surrounding area have provided significant local support. For example, during the past five years, gifts to the West Plains Campus from residents of Howell County and contributions from the City of West Plains in support of SMSU-West Plains have exceeded hundreds of thousands of dollars. Clearly there has been significant local/public support of SMSU-West Plains.

You have also stated that the "campus provides a variety of educational and community services, including a summerfest enrichment program for area elementary students, an adult literacy program, professional development and other non-credit courses for local business and industry."

Subsection 5 of Section 160.545 refers to any public community college or vocational or technical school. The word "any" is all comprehensive and the equivalent of the words "every" and "all." Hamilton Fire Insurance Company v. Cervantes, 278 S.W.2d 20, 24 (Mo. App. 1955). The word "any" is all inclusive and should not be interpreted to be restricted in its meaning. Reiter v. State Farm Mutual Automobile Insurance Company, 357 F.Supp. 1006, 1009 (Ark. 1973). See also State



ex rel. Sayad v. Zych, 642 S.W.2d 907, 911 (Mo. banc 1982) (When the word "any" is used in a constitutional provision, its meaning is all-comprehensive, and is equivalent to "every"). In determining the public community colleges and vocational and technical schools which are to receive the benefits of subsection 5, the use of the word "any" indicates the terms "public community colleges and vocational and technical schools" should be given an all inclusive meaning and the meaning of the terms should not be unduly restricted.

When interpreting a statute, the primary responsibility is to ascertain the intent of the legislature from the language used and give effect to that intent if possible. Mayfield v. Brown Shoe Company, 941 S.W.2d 31, 36 (Mo. App. 1997). To arrive at the legislature's intent when it leaves a phrase or term undefined, the objectives of the act are to be considered, and the construction given must be reasonable and logical. Id. Where the legislature does not define a phrase used in a statute, words used in the statute are given their plain and ordinary meaning which is found in the dictionary. State v. Carson, 941 S.W.2d 518, 521 (Mo. banc 1997).

Section 160.545 does not contain a definition for "public community college or vocational or technical school."<sup>2</sup> Webster's New World Dictionary, Second College

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<sup>2</sup> Although "community college" is not defined for purposes of Section 160.545, "community college" is defined in subsection 5 of Section 163.191, RSMo 1994, for purposes of that section, as:

5. A "**community college**" is an institution of higher education deriving financial resources from local, state, and federal sources, and providing postsecondary education primarily for persons above the twelfth grade age level, including courses in:

- (1) Liberal arts and sciences, including general education;
- (2) Occupational, vocational-technical; and
- (3) A variety of educational community services.

Community college course offerings lead to the granting of certificates, diplomas, and/or associate degrees, but do not include baccalaureate or higher degrees.

This definition is consistent with the conclusion reached in this opinion; however, this opinion

Edition (hereinafter sometimes referred to as "Webster's") defines "community college" as "a junior college established to serve a certain community and supported in part by it". Webster's defines "junior college" as "a school offering courses two years beyond the high school level, either the first two years of the standard college course or terminal study programs in various fields, and awarding a certificate at the completion of the course." "Vocational" is defined by Webster's as including "education, training, etc. intended to prepare one for an occupation," while "technical" is defined as "having to do with the practical, individual, or mechanical arts or the applied sciences."

Based on the facts you have provided, the West Plains Campus is within the plain and ordinary meaning of the term "community college." The West Plains Campus serves a certain community and is supported in part by it. You have stated that 94.1 percent of the student population is from Howell County and the six neighboring counties. You have stated that local support from residents of Howell County and the City of West Plains has exceeded hundreds of thousands of dollars during the past five years. The West Plains Campus offers courses two years beyond the high school level. Section 174.500 provides for the offering of one-year certificates, two-year associate degrees and credit and noncredit courses. The information you provided indicates the school offers seven associate degrees but does not offer baccalaureate or higher degrees. The plain and ordinary meaning of the term "community college" would include the West Plains Campus.

The apparent objective of subsection 5 of Section 160.545 is to benefit schools providing programs such as those provided by the West Plains Campus. To interpret the term "community college" so as to exclude the West Plains Campus would not be consistent with the apparent legislative objective in enacting subsection 5 of Section 160.545

In summary, the West Plains Campus fits the plain and ordinary meaning of the term "community college." The use by the legislature of "any" preceding "community college" indicates the term "community college" should be given an all inclusive meaning and the meaning should not be unduly restricted. Including the West Plains Campus furthers the apparent objective of the legislature in enacting subsection 5 of Section 160.545. Therefore, we conclude the West Plains Campus is eligible for

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only addresses the applicability of subsection 5 of Section 160.545 to the West Plains Campus.

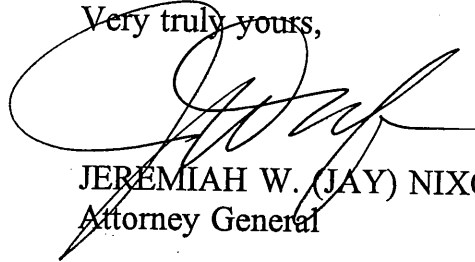
The Honorable Michael J. Lybyer  
The Honorable Lawrence (Doyle) Childers  
Page 7

reimbursement of the cost of tuition, books and fees as provided in subsection 5 of Section 160.545.

CONCLUSION

It is the opinion of this office that for purposes of subsection 5 of Section 160.545, RSMo 1994, the West Plains Campus of Southwest Missouri State University is "any public community college or vocational or technical school" and entitled to reimbursement of the cost of tuition, books and fees as provided in that section.

Very truly yours,

A handwritten signature in black ink, appearing to read "Jay Nixon", is written over the typed name and title.

JEREMIAH W. (JAY) NIXON  
Attorney General



ATTORNEY GENERAL OF MISSOURI

JEREMIAH W. (JAY) NIXON  
ATTORNEY GENERAL

JEFFERSON CITY  
65102

P.O. Box 899  
(573) 751-3321

January 21, 1998

OPINION LETTER NO. 103-98

The Honorable Rebecca McDowell Cook  
Missouri Secretary of State  
State Capitol Building  
Jefferson City, MO 65101

Dear Secretary Cook:

This opinion letter is in response to your request for our review under Section 116.332, RSMo Supp. 1997, for sufficiency as to form of an initiative petition relating to the amendment of Article I of the Missouri Constitution by adopting one new section to be known as Section 33. A copy of the initiative petition which you submitted to this office on January 12, 1998, is attached for reference.

We conclude the petition must be rejected as to form for the following reasons:

1. The petition does not contain the enacting clause required by Article III, Section 50 of the Missouri Constitution. Article III, Section 50 requires the enacting clause on petitions for constitutional amendments to be "Be it resolved by the people of the state of Missouri that the Constitution be amended." The petition contains the enacting clause specified in Article III, Section 50 for laws, not constitutional amendments.

2. In the paragraph of the petition commencing "We, the undersigned, registered . . .," the section proposed is referred to as the "proposed law." Section 116.040, RSMo Supp. 1997, in setting forth the form of an initiative petition, provides for "law" or "amendment to the constitution" to be inserted in this paragraph of the petition. The section proposed is an "amendment to the constitution" and should be referred to in this paragraph as such.

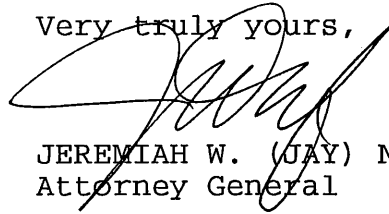
3. The petition does not contain at the bottom of the page a location for "Notary Public (Seal)" and "My commission expires... ." Section 116.040 requires a location be provided for those items.

The Honorable Rebecca McDowell Cook

In addition to the reasons for rejection specified above, two other concerns are apparent from our review of the petition form: 1) The day on which the election is to be held in November 1998 has been left blank. Customarily, the day is inserted in the pre-printed petition form; 2) The petition does not appear to have any available space on which to affix the official ballot title. Section 116.180, RSMo Supp. 1997, provides persons circulating a petition shall affix the official ballot title to each page of the petition prior to circulation.

Because of our rejection of the form of the petition for the reasons stated above, we have not reviewed the petition to determine if additional deficiencies exist.

Very truly yours,



JEREMIAH W. (JAY) NIXON  
Attorney General

Enclosure



ATTORNEY GENERAL OF MISSOURI

JEREMIAH W. (JAY) NIXON  
ATTORNEY GENERAL

JEFFERSON CITY  
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P.O. Box 899  
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January 22, 1998

OPINION LETTER NO. 104-98

The Honorable Rebecca McDowell Cook  
Missouri Secretary of State  
State Capitol Building  
Jefferson City, MO 65101

Dear Secretary Cook:

This opinion letter is in response to your request for our review under Section 116.332, RSMo Supp. 1997, for sufficiency as to form of an initiative petition proposing the following language: "The constitution of Missouri will recognize that person hood and humane life begins at and exist at the embryonic stage." A copy of the initiative petition which you submitted to this office on January 12, 1998, is attached for reference.

We conclude the petition must be rejected as to form for the following reasons:

1. The petition does not contain an enacting clause as required by Article III, Section 50 of the Missouri Constitution. Article III, Section 50 requires the enacting clause on petitions for constitutional amendments to be "Be it resolved by the people of the state of Missouri that the Constitution be amended."

2. In the paragraph of the petition commencing "We, the undersigned, registered . . .," the language proposed is referred to as "proposed law (or amendment to the constitution)." Section 116.040, RSMo Supp. 1997, in setting forth the form of an initiative petition, indicates that "law" or "amendment to the constitution," whichever is appropriate, should be inserted in this paragraph of the petition. Assuming the language proposed is an "amendment to the constitution," this paragraph should refer to an "amendment to the constitution" and the reference to proposed law should be deleted.

3. In the paragraph of the petition commencing "We, the undersigned, registered . . .," the date of the general election at which the language proposed by the petition is to be submitted to the voters has been left blank. The appropriate date should be inserted rather than blanks appearing in the petition form.

The Honorable Rebecca McDowell Cook

4. The language proposed to be added, presumably to the Missouri Constitution, is not underlined. Section 116.050, RSMo Supp. 1997, requires all new matter to be underlined.

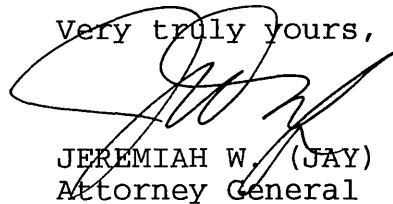
5. The sentence at the top of the petition commencing "It is a class A . . ." refers to the petition as a "referendum." The form of initiative petition set forth in Section 116.040 provides for the term "initiative petition" to be used in this sentence, not "referendum."

6. The sentence at the top of the petition commencing "It is a class A . . ." omits the word "sign" at one location. Section 116.040 provides for the word "sign" to appear following the words "knowingly to" so that the phrase reads "or knowingly to sign his name more than once for the same measure for the same election."

The deficiencies set forth above, both the number of deviations from the required form and the significance of some of those deviations, causes us to reject the petition as to form.

Because of our rejection of the form of the petition for the reasons stated above, we have not reviewed the petition to determine if additional deficiencies exist.

Very truly yours,



JEREMIAH W. (JAY) NIXON  
Attorney General

Enclosure



ATTORNEY GENERAL OF MISSOURI

JEREMIAH W. (JAY) NIXON  
ATTORNEY GENERAL

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February 13, 1998

OPINION LETTER NO. 110-98

The Honorable Rebecca McDowell Cook  
Missouri Secretary of State  
State Capitol Building  
Jefferson City, MO 65101

Dear Secretary Cook:

This opinion letter is in response to your request for our review under Section 116.332, RSMo Supp. 1997, for sufficiency as to form of an initiative petition apparently proposing a constitutional amendment to read: "The constitution of Missouri recognizes that personhood and human life exist at the embryonic stage." A copy of the initiative petition which you submitted to this office on February 3, 1998, is attached for reference.

We conclude the petition must be rejected as to form for the following reasons:

1. The petition does not have any available space on which to affix the official ballot title. Section 116.180, RSMo Supp. 1997, provides persons circulating a petition shall affix the official ballot title to each page of the petition prior to circulation.

2. The petition does not clearly identify the proposed amendment to the constitution.

a. Section 116.050.2(1), RSMo Supp. 1997, provides all initiative petition measures shall have all new matter shown underlined. The petition has the enacting clause underlined as well as the new matter.



b. The sentence "The constitution of Missouri recognizes that personhood and human life exist at the embryonic stage" is underlined and appears after the enacting clause, but there is no indication that the proposed amendment is the addition of this sentence to the constitution.

c. The sentence commencing "We, the undersigned, registered voters . . . " refers to "the following proposed amendment"; however, the amendment precedes this sentence rather than following the sentence.

Because of our rejection of the form of the petition for the reasons stated above, we have not reviewed the petition to determine if additional deficiencies exist.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Jay Nixon", written over a horizontal line.

JEREMIAH W. (JAY) NIXON  
Attorney General

Enclosure



ATTORNEY GENERAL OF MISSOURI

JEREMIAH W. (JAY) NIXON  
ATTORNEY GENERAL

JEFFERSON CITY  
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February 13, 1998

OPINION LETTER NO. 111-98

The Honorable Rebecca McDowell Cook  
Missouri Secretary of State  
State Capitol Building  
Jefferson City, MO 65101

Dear Secretary Cook:

This opinion letter is in response to your request for our review under Section 116.332, RSMo Supp. 1997, for sufficiency as to form of an initiative petition relating to a proposed law concerning campaign finance. A copy of the initiative petition which you submitted to this office on February 6, 1998, is attached for reference.

We approve the petition as to form. However, since the Secretary of State has been given final approval or rejection authority under Section 116.332, our approval of the form of the petition does not preclude you from rejecting the petition.

Inasmuch as our review is simply for the purpose of determining sufficiency as to form, the fact that we do not reject the petition is not to be construed as a determination that the petition is sufficient as to substance. Likewise, since our review is mandated by statute, no action we take with respect to such review should be construed as an endorsement of the petition or as the expression of any view respecting the adequacy or inadequacy of the petition generally or of the objectives of its proponents.

Very truly yours,

JEREMIAH W. (JAY) NIXON  
Attorney General

Enclosure



ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY

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JEREMIAH W. (JAY) NIXON  
ATTORNEY GENERAL

P.O. Box 899  
(573) 751-3321

February 24, 1998

OPINION LETTER NO. 113-98

The Honorable Rebecca McDowell Cook  
Missouri Secretary of State  
State Capitol Building  
Jefferson City, MO 65101

Dear Secretary Cook:

This opinion letter is in response to your request for our review under Section 116.332, RSMo Supp. 1997, for sufficiency as to form of an initiative petition relating to the amendment of Article I of the Missouri Constitution by adopting one new section to be known as Section 33. A copy of the initiative petition which you submitted to this office on February 18, 1998, is attached for reference.

We approve the petition as to form. However, since the Secretary of State has been given final approval or rejection authority under Section 116.332, our approval of the form of the petition does not preclude you from rejecting the petition.

Inasmuch as our review is simply for the purpose of determining sufficiency as to form, the fact that we do not reject the petition is not to be construed as a determination that the petition is sufficient as to substance. Likewise, since our review is mandated by statute, no action we take with respect to such review should be construed as an endorsement of the petition or as the expression of any view respecting the adequacy or inadequacy of the petition generally or of the objectives of its proponents.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Jay Nixon", written over a horizontal line.

JEREMIAH W. (JAY) NIXON  
Attorney General

Enclosure



ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY

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JEREMIAH W. (JAY) NIXON  
ATTORNEY GENERAL

P.O. Box 899  
(573) 751-3321

March 3, 1998

OPINION LETTER NO. 115-98

The Honorable Rebecca McDowell Cook  
Missouri Secretary of State  
State Capitol Building  
Jefferson City, MO 65101

Dear Secretary Cook:

You have submitted to us a summary statement prepared pursuant to Section 116.334, RSMo Supp. 1997. The summary statement which you have submitted is as follows:

Shall Missouri statutes be enacted so that candidates for election to General Assembly and statewide offices who comply with various requirements regarding campaign contributions and finances, including limiting campaign spending and use of personal funds, may apply to and obtain certification from the Missouri Ethics Commission to receive public funds for their campaigns, with penalties for violation, where the funds allocated to participating candidates by the Commission are provided by reducing the maximum federal income tax deduction individuals may claim for purposes of determining state income tax liability?

See our Opinion Letter No. 111-98.

Pursuant to Section 116.334, we approve the legal content and form of the proposed statement. Since our review of the statement is mandated by statute, no action we take with respect to such review should be construed as an endorsement of the petition or as the expression of any view regarding the objectives of its proponents.

Sincerely,

A handwritten signature in dark ink, appearing to read "Jay Nixon", written over a circular embossed seal.

JEREMIAH W. (JAY) NIXON  
Attorney General



ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY

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JEREMIAH W. (JAY) NIXON  
ATTORNEY GENERAL

P.O. Box 899  
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March 6, 1998

OPINION LETTER NO. 116-98

The Honorable Margaret Kelly, CPA  
Missouri State Auditor  
State Capitol Building  
Jefferson City, MO 65101

Dear Auditor Kelly:

You have submitted to us a fiscal note and fiscal note summary prepared pursuant to Section 116.175, RSMo Supp. 1997. The fiscal note summary which you have submitted is as follows:

The costs of this proposal are approximately \$11,000,000 per year and will be funded through an increase in state income taxes for some individuals by reducing the maximum federal income tax deduction those individuals may claim for purposes of determining state income tax liability.

See our Opinion Letter No. 111-98.

Pursuant to Section 116.175, we approve the legal content and form of the fiscal note summary. Since our review of the fiscal note summary is mandated by statute, no action we take with respect to such review should be construed as an endorsement of the petition or as the expression of any view regarding the objectives of its proponents.

Sincerely,

A handwritten signature in dark ink, appearing to read "Jay Nixon", written over a horizontal line.

JEREMIAH W. (JAY) NIXON  
Attorney General



ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY

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March 6, 1998

OPINION LETTER NO. 118-98

The Honorable Margaret Kelly, CPA  
Missouri State Auditor  
State Capitol Building  
Jefferson City, MO 65101

Dear Auditor Kelly:

By letter dated February 27, 1998, you submitted to us a fiscal note and fiscal note summary prepared pursuant to Section 116.175, RSMo Supp. 1997. The fiscal note summary which you submitted is as follows:

The estimated fiscal impact of this proposed measure on state and local governments is \$0.

See our Opinion Letter No. 113-98.

Pursuant to Section 116.175, we approve the legal content and form of the fiscal note summary. Since our review of the fiscal note summary is mandated by statute, no action we take with respect to such review should be construed as an endorsement of the petition or as the expression of any view regarding the objectives of its proponents.

Sincerely,

A handwritten signature in black ink, appearing to read "Jay Nixon", written over a circular stamp.

JEREMIAH W. (JAY) NIXON  
Attorney General



ATTORNEY GENERAL OF MISSOURI

JEREMIAH W. (JAY) NIXON  
ATTORNEY GENERAL

JEFFERSON CITY  
65102

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March 16, 1998

OPINION LETTER NO. 120-98

The Honorable Rebecca McDowell Cook  
Missouri Secretary of State  
State Capitol Building  
Jefferson City, MO 65101

Dear Secretary Cook:

You have submitted to us a summary statement prepared pursuant to Section 116.334, RSMo Supp. 1997. The summary statement which you have submitted is as follows:

Shall Article I of the Missouri Constitution be amended to provide that children of this state have a right to a smoke-free environment and that any adult responsible for the care, custody and control of a minor child who exposes the child to second-hand smoke, endangers the welfare of the child and to further provide that the Missouri General Assembly may enforce the amendment by appropriate legislation?

See our Opinion Letter No. 113-98.

Pursuant to Section 116.334, we approve the legal content and form of the proposed statement. Since our review of the statement is mandated by statute, no action we take with respect to such review should be construed as an endorsement of the petition or as the expression of any view regarding the objectives of its proponents.

Sincerely,

A handwritten signature in black ink, appearing to read "Jay Nixon", is written over the typed name.

JEREMIAH W. (JAY) NIXON  
Attorney General



ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY

65102

JEREMIAH W. (JAY) NIXON  
ATTORNEY GENERAL

P.O. Box 899  
(573) 751-8321

March 23, 1998

OPINION LETTER NO. 124-98

The Honorable Rebecca McDowell Cook  
Missouri Secretary of State  
State Capitol Building  
Jefferson City, MO 65101

Dear Secretary Cook:

This opinion letter is in response to your request for our review under Section 116.332, RSMo Supp. 1997, for sufficiency as to form of an initiative petition relating to the amendment of Section 39(e) of Article III of the Missouri Constitution concerning riverboat gambling. A copy of the initiative petition which you submitted to this office on March 18, 1998, is attached for reference.

We approve the petition as to form. However, since the Secretary of State has been given final approval or rejection authority under Section 116.332, our approval of the form of the petition does not preclude you from rejecting the petition.

Inasmuch as our review is simply for the purpose of determining sufficiency as to form, the fact that we do not reject the petition is not to be construed as a determination that the petition is sufficient as to substance. Likewise, since our review is mandated by statute, no action we take with respect to such review should be construed as an endorsement of the petition or as the expression of any view respecting the adequacy or inadequacy of the petition generally or of the objectives of its proponents.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Jay Nixon", written over a horizontal line.

JEREMIAH W. (JAY) NIXON  
Attorney General

Enclosure



COMMERCIAL MOTOR VEHICLES:  
DEPARTMENT OF PUBLIC SAFETY:  
HIGHWAY PATROL:  
WEIGHT LIMIT ENFORCEMENT:

(1) Commercial vehicle enforcement officers are authorized by subsection 4(3) of Section 304.230, RSMo, as amended by House Bill No. 1802, 89th General Assembly, Second Regular

Session (1998), to make arrests for violations of those offenses referred to in subdivisions (1) and (2) of subsection 4 of Section 304.230, (2) the authority of commercial vehicle enforcement officers under subsection 4(3) of Section 304.230 to make arrests upon warrants refers only to arrests upon warrants relating to violations of subdivisions (1) and (2) of subsection 4 of Section 304.230, (3) commercial vehicle enforcement officers are not prohibited by Section 571.030, RSMo, as amended by Senate Substitute for Senate Bill No. 478, 89th General Assembly, Second Regular Session (1998), from carrying concealed weapons, and (4) commercial vehicle enforcement officers may make arrests for violations of Sections 303.024 and 303.025, RSMo, relating to proof of insurance.

December 1, 1998

OPINION NO. 128-98

The Honorable Tim Van Zandt  
State Representative, District 38  
State Capitol Building  
Jefferson City, MO 65101

Dear Representative Van Zandt:

This opinion is in response to your questions relating to the statutory authority of commercial vehicle enforcement officers. You ask if commercial vehicle enforcement officers have the statutory authority to:

1. Make arrests related to vehicle offenses,
2. Make arrests related to non-vehicle offenses,
3. Carry concealed weapons,
4. Make arrests for lack of proof of insurance.

You also ask if a commercial vehicle enforcement officer killed in the line of duty is eligible for the same benefits as a peace officer.

The powers of commercial vehicle enforcement officers are set forth primarily in subsection 4 of Section 304.230, RSMo, as amended by House Bill No. 1802, 89th General Assembly, Second Regular Session (1998).<sup>1</sup> Section 304.230 provides in relevant part:

304.230. 1. It shall be the duty of the sheriff of each county or city to see that the provisions of sections 304.170 to 304.230 are enforced, and any peace officer or police officer of any county or city or any highway patrol officer shall have the power to arrest on sight or upon a warrant any person found violating or having violated the provisions of such sections.

2. The sheriff or any peace officer or any highway patrol officer is hereby given the power to stop any such conveyance or vehicle as above described upon the public highway for the purpose of determining whether such vehicle is loaded in excess of the provisions of sections 304.170 to 304.230, and if he or she finds such vehicle loaded in violation of the provisions thereof he or she shall have a right at that time and place to cause the excess load to be removed from such vehicle; and provided further, that any regularly employed maintenance man of the department of transportation shall have the right and authority in any part of this state to stop any such conveyance or vehicle upon the public highway for the purpose of determining whether such vehicle is loaded in excess of the provisions of sections 304.170 to 304.230, and if he or she finds such vehicle loaded in violation of the provisions thereof, he or she shall have the right at that time and place to cause the excess load to be removed from such vehicle. When only an axle or a tandem axle group of a vehicle is overloaded, . . . . The highways and transportation commission of this state may deputize and appoint any number of their regularly employed maintenance men to enforce the provisions of such sections, and the maintenance men delegated and appointed in this section shall report to the proper officers any violations of sections 304.170 to 304.230 for prosecution by such proper officers.

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<sup>1</sup>This opinion does not address "commercial vehicle inspectors" whose powers are set forth primarily in subsection 3 of Section 304.230.

3. The superintendent of the Missouri state highway patrol may assign qualified persons who are not highway patrol officers to supervise or operate permanent or portable weigh stations used in the enforcement of commercial vehicle laws. These persons shall be designated as commercial vehicle inspectors and have limited police powers:

(1) To issue uniform traffic tickets at a permanent or portable weigh station for violations of rules and regulations of the division of motor carrier and railroad safety of the department of economic development and department of public safety, and laws, rules, and regulations pertaining to commercial motor vehicles and trailers and related to size, weight, fuel tax, registration, equipment, driver requirements, transportation of hazardous materials and operators' or chauffeurs' licenses, and the provisions of sections 303.024 and 303.025, RSMo;

(2) To require the operator of any commercial vehicle to stop and submit to a vehicle and driver inspection to determine compliance with commercial vehicle laws, rules, and regulations, the provisions of sections 303.024 and 303.025, RSMo, and to submit to a cargo inspection when reasonable grounds exist to cause belief that a vehicle is transporting hazardous materials as defined by Title 49 of the Code of Federal Regulations;

(3) To make arrests for violation of subdivisions (1) and (2) of this subsection. Commercial vehicle inspectors shall not have the authority to exercise the powers granted in subdivisions (1), (2) and (3) of this subsection until they have successfully completed training approved by the superintendent of the Missouri state highway patrol; nor shall they have the right as peace officers to bear arms.

4. The superintendent of the Missouri state highway patrol may appoint qualified persons, who are not members of the highway patrol, designated as commercial vehicle enforcement officers, with the powers:

(1) To issue uniform traffic tickets for violations of laws, rules and regulations pertaining to commercial vehicles, trailers, special mobile equipment and drivers of such vehicles, and the provisions of sections 303.024 and 303.025, RSMo;

(2) To require the operator of any commercial vehicle to stop and submit to a vehicle and driver inspection to determine compliance with commercial vehicle laws, rules, and regulations, compliance with the provisions of sections 303.024 and 303.025, RSMo, and to submit to a cargo inspection when reasonable grounds exist to cause belief that a vehicle is transporting hazardous materials as defined by Title 49 of the Code of Federal Regulations;

(3) To make arrests upon warrants and for violations of subdivisions (1) and (2) of this subsection. Commercial vehicle enforcement officers shall not have the authority to exercise the powers granted in subdivisions (1), (2) and (3) of this subsection until they have successfully completed training approved by the superintendent of the Missouri state highway patrol. Commercial vehicle enforcement officers shall have the right as peace officers to bear arms. [Emphasis added.]

\* \* \*

Section 304.001, RSMo Supp. 1997, in subsection 2 defines "commercial vehicle enforcement officer." Section 304.001 provides in relevant part:

**304.001. Definitions for chapter 304 and chapter 307.**--As used in this chapter and chapter 307, RSMo, the following terms shall mean:

\* \* \*

(2) "**Commercial vehicle enforcement officers**", employees of the Missouri state highway patrol who are not members of the patrol but who are appointed by the superintendent of the highway patrol to enforce the laws, rules, and regulations pertaining to commercial vehicles, trailers, special mobile equipment and drivers of such vehicles;

(3) "**Commercial vehicle inspectors**", employees of the Missouri state highway patrol who are not members of the patrol but who are appointed by the superintendent of the highway patrol to supervise or operate permanent or portable weigh stations in the enforcement of commercial vehicle laws;

\* \* \*

Your first and second questions ask about the authority of commercial vehicle enforcement officers to make arrests. Subsection 4(3) of Section 304.230 authorizes such officers to make arrests for violations of subdivisions (1) and (2) of subsection 4. Subdivisions (1) and (2) basically refer to violations of commercial vehicle laws, rules and regulations. Therefore, commercial vehicle enforcement officers are authorized by subsection 4(3) of Section 304.230 to make arrests for violations of those offenses referred to in subdivisions (1) and (2) of subsection 4 of Section 304.230.

Subsection 4(3) also authorizes commercial vehicle enforcement officers to make arrests upon warrants. We need to consider if such officers may make arrests on any outstanding warrant or only on warrants relating to violations of subdivisions (1) and (2) of subsection 4. The pertinent language in subsection 4(3) states: "To make arrests upon warrants and for violations of subdivisions (1) and (2) of this subsection." In determining the legislature's intention, provisions of the entire legislative act must be construed together, and if reasonably possible, all provisions must be harmonized. Collins v. Director of Revenue, 691 S.W.2d 246, 251 (Mo. banc 1985); State v. Sledd, 949 S.W.2d 643, 646 (Mo. App. 1997). Subsection 4 of Section 304.230 was initially enacted in 1994 as part of Senate Bill No. 475, 87th General Assembly, Second Regular Session. Senate Bill No. 475 also initially enacted the definition of "commercial vehicle enforcement officers" set forth in subsection 2 of Section 304.001. The definition of commercial vehicle enforcement officers in subsection 2 of Section 304.001 refers to such officers as enforcing laws, rules and regulations pertaining to commercial vehicles, trailers, special mobile equipment and drivers of such vehicles. Such definition indicates limited enforcement powers and does not give any indication of a legislative intent for such officers to make arrests on warrants for offenses other than those in subdivisions (1) and (2) of subsection 4 of Section 304.230. In harmonizing the definition in subsection 2 of Section 304.001 with the power to make "arrests upon warrants" in subsection 4(3) of Section 304.230, we conclude the authority to make arrests upon warrants in subsection 4(3) refers only to arrests upon warrants relating to violations of subdivisions (1) and (2) of subsection 4.

Commercial vehicle enforcement officers have the power of arrest provided in subsection 4 of Section 304.230. Where special powers are expressly conferred or special methods are expressly prescribed for the exercise of power, other powers and procedures are excluded. Brown v. Morris, 290 S.W.2d 160, 166 (Mo. banc 1956). See also Thompson v. Committee on Legislative Research, 932 S.W.2d 392, 395 (Mo. banc 1996) and State v. Ruch, 926 S.W.2d 937, 939 (Mo. App. 1996). Commercial vehicle enforcement officers have no power to make arrests for offenses other than as provided in subsection 4.

Your third question asks if commercial vehicle enforcement officers may carry concealed weapons. Subsection 4(3) of Section 304.230 states: "Commercial vehicle enforcement officers shall have the right as peace officers to bear arms." Section 571.030, RSMo, as amended by Senate Substitute for Senate Bill No. 478, 89th General Assembly, Second Regular Session (1998), makes carrying a concealed weapon a crime but provides exemptions for certain persons. Those exempted pursuant to subsection 2(1) of Section 571.030 are:

(1) All state, county and municipal law enforcement officers possessing the duty and power of arrest for violation of the general criminal laws of the state or for violation of ordinances of counties or municipalities of the state, or any person summoned by such officers to assist in making arrests or preserving the peace while actually engaged in assisting such officer;

Subsection 4(3) of Section 304.230 expressly gives commercial vehicle enforcement officers the right as peace officers to bear arms. Peace officers as listed in subsection 2(1) of Section 571.030 are exempt from the statutory prohibition against carrying concealed weapons. Therefore, commercial vehicle enforcement officers are not prohibited by statute from carrying concealed weapons.

Your fourth question asks if commercial vehicle enforcement officers may make arrests for lack of proof of insurance. This question was resolved by a 1998 statutory amendment to subdivisions (1) and (2) of subsection 4 of Section 304.230 by House Bill No. 1802. In subdivision (1) of subsection 4 the phrase "and the provisions of sections 303.024 and 303.025, RSMo" was added, and in subdivision (2) the phrase "compliance with the provisions of sections 303.024 and 303.025, RSMo" was added. Sections 303.024 and 303.025 are the provisions that require the owner of a motor vehicle to maintain financial responsibility and to have an insurance identification card carried in the motor vehicle. Subsection 4(3) of Section 304.230 authorizes commercial vehicle enforcement officers to make arrests for violations of subdivisions (1) and (2) of subsection 4. The 1998 statutory amendment to subdivisions (1) and (2) adding the reference to Sections 303.024 and 303.025 gives commercial vehicle enforcement officers the power to make arrests for violations of Sections 303.024 and 303.025, relating to proof of insurance.

Your final question asks if a commercial vehicle enforcement officer killed in the line of duty is eligible for the same benefits as a peace officer. You have provided no information regarding the death of a commercial vehicle enforcement officer and

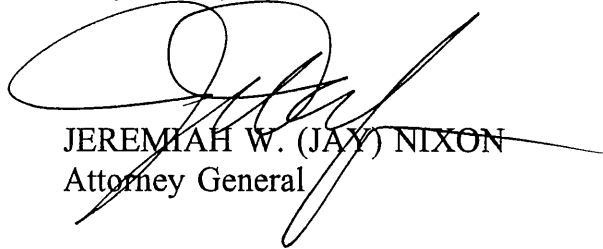
The Honorable Tim Van Zandt  
Page 7

we are unaware of any commercial vehicle enforcement officer being killed recently in the line of duty. Determining the benefits available to the estate or family of a commercial vehicle enforcement officer is a matter to be considered in the context of a specific fact situation. Therefore, we respectfully decline to opine in response to this question.

### CONCLUSION

It is the opinion of this office that: (1) commercial vehicle enforcement officers are authorized by subsection 4(3) of Section 304.230, RSMo, as amended by House Bill No. 1802, 89th General Assembly, Second Regular Session (1998), to make arrests for violations of those offenses referred to in subdivisions (1) and (2) of subsection 4 of Section 304.230, (2) the authority of commercial vehicle enforcement officers under subsection 4(3) of Section 304.230 to make arrests upon warrants refers only to arrests upon warrants relating to violations of subdivisions (1) and (2) of subsection 4 of Section 304.230, (3) commercial vehicle enforcement officers are not prohibited by Section 571.030, RSMo, as amended by Senate Substitute for Senate Bill No. 478, 89th General Assembly, Second Regular Session (1998), from carrying concealed weapons, and (4) commercial vehicle enforcement officers may make arrests for violations of Sections 303.024 and 303.025, RSMo, relating to proof of insurance.

Very truly yours,



JEREMIAH W. (JAY) NIXON  
Attorney General



ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY

65102

JEREMIAH W. (JAY) NIXON  
ATTORNEY GENERAL

P.O. Box 899  
(573) 751-3321

April 1, 1998

OPINION LETTER NO. 129-98

The Honorable Rebecca McDowell Cook  
Missouri Secretary of State  
State Capitol Building  
Jefferson City, MO 65101

Dear Secretary Cook:

This opinion letter is in response to your request for our review under Section 116.332, RSMo Supp. 1997, for sufficiency as to form of an initiative petition relating to the amendment of Section 39(e) of Article III of the Missouri Constitution concerning riverboat gambling. A copy of the initiative petition which you submitted to this office on March 30, 1998, is attached for reference.

We approve the petition as to form. However, since the Secretary of State has been given final approval or rejection authority under Section 116.332, our approval of the form of the petition does not preclude you from rejecting the petition.

Inasmuch as our review is simply for the purpose of determining sufficiency as to form, the fact that we do not reject the petition is not to be construed as a determination that the petition is sufficient as to substance. Likewise, since our review is mandated by statute, no action we take with respect to such review should be construed as an endorsement of the petition or as the expression of any view respecting the adequacy or inadequacy of the petition generally or of the objectives of its proponents.

Very truly yours,

JEREMIAH W. (JAY) NIXON  
Attorney General

Enclosure





ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY

65102

JEREMIAH W. (JAY) NIXON  
ATTORNEY GENERAL

P.O. Box 899  
(573) 751-3321

April 10, 1998

OPINION LETTER NO. 130-98

The Honorable Rebecca McDowell Cook  
Missouri Secretary of State  
State Capitol Building  
Jefferson City, MO 65101

Dear Secretary Cook:

You have submitted to us a summary statement prepared pursuant to Section 116.334, RSMo Supp. 1997. The summary statement which you have submitted is as follows:

Shall the Missouri Constitution be amended to authorize the general assembly to permit upon the Mississippi and Missouri Rivers only, including artificial spaces containing water that are within 1000 feet of the closest edge of the main channel of either of those rivers, lotteries, gift enterprises and games of chance to be conducted on excursion gambling boats and floating facilities and to provide that any license issued before or after the adoption of this amendment for any such boat or facility located in any such artificial space shall be deemed authorized by the general assembly and compliant with this section?

See our Opinion Letter No. 129-98.

Pursuant to Section 116.334, we approve the legal content and form of the proposed statement. Since our review of the statement is mandated by statute, no action we take with respect to such review should be construed as an endorsement of the petition or as the expression of any view regarding the objectives of its proponents.

Sincerely,

A handwritten signature in dark ink, appearing to read "Jay Nixon", written over a horizontal line.

JEREMIAH W. (JAY) NIXON  
Attorney General



ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY

65102

JEREMIAH W. (JAY) NIXON  
ATTORNEY GENERAL

P.O. Box 899  
(573) 751-3321

April 10, 1998

OPINION LETTER NO. 131-98

The Honorable Margaret Kelly, CPA  
Missouri State Auditor  
State Capitol Building  
Jefferson City, MO 65101

Dear Auditor Kelly:

You have submitted to us a fiscal note and fiscal note summary prepared pursuant to Section 116.175, RSMo Supp. 1997. The fiscal note summary which you have submitted is as follows:

The fiscal impact to state and local governments of adopting this constitutional amendment is the continuation of revenues ranging from approximately \$95,000,000 to \$170,000,000 annually, that are currently received from gambling boats and floating facilities that most likely could not continue to be licensed under the present constitution.

See our Opinion Letter No. 129-98.

Pursuant to Section 116.175, we approve the legal content and form of the fiscal note summary. Since our review of the fiscal note summary is mandated by statute, no action we take with respect to such review should be construed as an endorsement of the petition or as the expression of any view regarding the objectives of its proponents.

Sincerely,

A handwritten signature in black ink, appearing to read "Jay Nixon", is written over the typed name and title.

JEREMIAH W. (JAY) NIXON  
Attorney General



ATTORNEY GENERAL OF MISSOURI

JEREMIAH W. (JAY) NIXON  
ATTORNEY GENERAL

JEFFERSON CITY  
65102

P.O. Box 899  
(573) 751-3321

May 1, 1998

OPINION LETTER NO. 135-98

The Honorable Rebecca McDowell Cook  
Missouri Secretary of State  
State Capitol Building  
Jefferson City, MO 65101

Dear Secretary Cook:

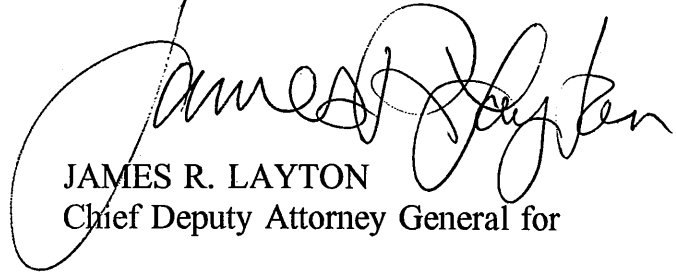
This opinion letter is in response to your request for our review under Section 116.332, RSMo Supp. 1997, for sufficiency as to form of an initiative petition proposing a constitutional amendment to read: "The constitution of Missouri recognizes that personhood and human life exist at the embryonic stage." A copy of the initiative petition which you submitted to this office on April 21, 1998, is attached for reference.

We conclude the petition must be rejected as to form. The proposed petition states "that the constitution be amended to read the following: . . . ." We assume that the intent of the proposed amendment is to add a section to the constitution rather than to replace the entire Missouri Constitution with the proposed amendment. If so, the petition should state that the proposed amendment is the adding of a new section to read as follows: . . . . In Missouri Attorney General Opinion Letter No. 110-98 where this office rejected the form of an initiative petition proposing a similar amendment, one basis for rejection of that petition was "there is no indication that the proposed amendment is the addition of this sentence to the constitution." While the other deficiencies listed in Opinion Letter No. 110-98 have been corrected, the deficiency discussed above still exists.

The Honorable Rebecca McDowell Cook  
May 1, 1998  
Page 2

Because of the deficiency discussed above, we reject the petition as to form.

Very truly yours,

A handwritten signature in black ink, appearing to read "James R. Layton", is written over the typed name and title.

JAMES R. LAYTON  
Chief Deputy Attorney General for

JEREMIAH W. (JAY) NIXON  
Attorney General

Enclosure

CONFLICT OF INTEREST:

GAMBLING:

MISSOURI GAMING COMMISSION:

There is no violation of Section 313.004.10, RSMo 1994, when a person employed by an excursion gambling boat is elected and serves as a

member of the board of directors of an ambulance district.

July 9, 1998

OPINION NO. 138-98

Tim Braun

St. Charles County Prosecuting Attorney

300 North Second St., Ste. 601

St. Charles, MO 63301-5415

Dear Mr. Braun:

This opinion is in response to your question asking:

Do the criminal and job forfeiture sanctions of Missouri Revised Statute Section Number 313.004.10 (1994) apply to a Station Casino St. Charles employee who holds a Level II Gaming License but has no other financial interest in the casino other than her employment, when she is elected to the Board of St. Charles Ambulance District which is a political subdivision in St. Charles County created according to the Missouri Revised Statute Section Number 190.010 (1994)?

Section 313.004, RSMo 1994, creates the "Missouri Gaming Commission" which has certain duties, powers and responsibilities relating to excursion gambling boats. Among the provisions in Section 313.004 is subsection 10 which relates to conflicts of interest. Subsection 10 of Section 313.004 provides in relevant part:

10. No person who has served . . . as an elected or appointed official of the state or of any city or county of this state in which the licensing of excursion gambling boats has been approved in either the city or county or both . . . shall, while in such office or during such employment and during the first two years after termination of his office or position, obtain direct ownership interest in or be employed by any excursion gambling boat licensed by the commission or which has applied for a license to the commission or enter into a contractual relationship related to direct gaming activity. A "**direct ownership**

**interest**" shall be defined as . . . . Any person who knowingly violates the provisions of this subsection is guilty of a class D felony. Any such member, officer or employee who personally and knowingly violates the provisions of this subsection, in addition to the foregoing penalty, shall, upon conviction, immediately and thereupon forfeit his office or employment. For purposes of this subsection, "**appointed official**" shall mean any official of this state or of any city or county authorized under subsection 10 of section 313.812 appointed to a position which has discretionary powers over the operations of any licensee or applicant for licensure by the commission. This shall only apply if the appointed official has a direct ownership interest in an excursion gambling boat licensed by the commission or which has applied for a license to the commission to be docked within the jurisdiction of his or her appointment. No elected or appointed official, his or her spouse or dependent child shall, while in such office or within two years after termination of his or her office or position, be employed by an applicant for an excursion gambling boat license or an excursion gambling boat licensed by the commission . . . . [Emphasis in statute.]

The relevant provision in subsection 10 refers to "elected or appointed official of the state or of any city or county of this state in which . . . ." The issue for consideration is whether a member of the board of directors of an ambulance district is deemed an official of any city or county.

The Ambulance District Law is contained in Sections 190.005, et seq., RSMo 1994. Section 190.010.2 provides that an ambulance district is a "body corporate and a political subdivision of the state." An ambulance district has the power to levy a property tax (Sections 190.035, et seq.), the power to acquire land (Section 190.060), and the power to borrow money and to issue bonds (Section 190.060), among other powers. An ambulance district is itself a political subdivision, distinct from any city or county.

This office, in prior opinions, has considered whether an ambulance district is distinct from the county. In Missouri Attorney General Opinion No. 90-96, a copy of which is enclosed, this office considered whether Section 50.660, RSMo, applies to ambulance districts. Section 50.660 refers to "county," resulting in this office concluding the section does not apply to ambulance districts which are political subdivisions distinct from county government. In Opinion No. 132, Melton, 1976, a copy of which is enclosed, this office concluded that a county prosecuting attorney has

Tim Braun  
Page 3

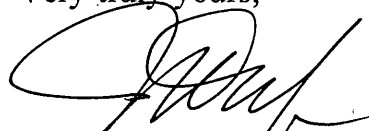
no duty or authority to represent ambulance districts, because ambulance districts are not a part of the county but instead are separate political subdivisions.

The prohibition in subsection 10 of Section 313.004 applies to elected and appointed officials of certain cities and counties, among others. An ambulance district is a separate political subdivision, distinct from a city or county. The person about whom you inquire is an elected official of an ambulance district so the prohibition in subsection 10 of Section 313.004 does not apply.

CONCLUSION

It is the opinion of this office there is no violation of Section 313.004.10, RSMo 1994, when a person employed by an excursion gambling boat is elected and serves as a member of the board of directors of an ambulance district.

Very truly yours,

A handwritten signature in black ink, appearing to read "Jay Nixon", is written over the printed name.

JEREMIAH W. (JAY) NIXON  
Attorney General

Enclosures



ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY

65102

JEREMIAH W. (JAY) NIXON  
ATTORNEY GENERAL

P.O. Box 899  
(573) 751-3321

June 26, 1998

OPINION LETTER NO. 141-98

The Honorable Margaret Kelly, CPA  
Missouri State Auditor  
State Capitol Building  
Jefferson City, MO 65101

Dear Auditor Kelly:

You have submitted to us a fiscal note and fiscal note summary prepared pursuant to Section 116.175, RSMo Supp. 1997, relating to House Committee Substitute for Senate Committee Substitute for Senate Joint Resolution No. 24, 89th General Assembly, Second Regular Session (1998). The fiscal note summary which you have submitted is as follows:

Assuming the general assembly authorizes the issuance of these bonds, the fiscal impact of this constitutional amendment to state and local governments is approximately \$17,300,000 annually in bond principal and interest payments and other costs over a 35 year period.

Pursuant to Section 116.175, we approve the legal content and form of the fiscal note summary. Since our review of the fiscal note summary is mandated by statute, no action we take with respect to such review should be construed as an endorsement of the ballot measure or as the expression of any view regarding the objectives of its proponents.

Sincerely,

A handwritten signature in dark ink, appearing to read "Jay Nixon", is written over the typed name.

JEREMIAH W. (JAY) NIXON  
Attorney General





ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY

65102

June 26, 1998

JEREMIAH W. (JAY) NIXON  
ATTORNEY GENERAL

P.O. Box 899  
(573) 751-3321

OPINION LETTER NO. 142-98

The Honorable Rebecca McDowell Cook  
Missouri Secretary of State  
State Capitol Building  
Jefferson City, MO 65101

Dear Secretary Cook:

You have submitted to us a summary statement prepared pursuant to Section 116.160, RSMo Supp. 1997, relating to House Committee Substitute for Senate Committee Substitute for Senate Joint Resolution No. 24, 89th General Assembly, Second Regular Session (1998). The summary statement which you have submitted is as follows:

Authorizes the State to issue bonds to fund distributions by the Missouri Clean Water Commission of water and sewer grants or loans to counties, municipalities, sewer and water districts for design, construction or improvements to public sewage collection and treatment facilities, drinking water systems and stormwater control projects.

Pursuant to Section 116.160, we approve the legal content and form of the proposed statement. Since our review of the statement is mandated by statute, no action we take with respect to such review should be construed as an endorsement of the ballot measure or as the expression of any view regarding the objectives of its proponents.

Sincerely,

A handwritten signature in dark ink, appearing to read "Jay Nixon", written over the typed name and title.

JEREMIAH W. (JAY) NIXON  
Attorney General



ATTORNEY GENERAL OF MISSOURI

JEREMIAH W. (JAY) NIXON  
ATTORNEY GENERAL

JEFFERSON CITY  
65102

P.O. Box 899  
(573) 751-3321

July 23, 1998

OPINION LETTER NO. 147-98

The Honorable Margaret Kelly, CPA  
Missouri State Auditor  
State Capitol Building  
Jefferson City, MO 65101

Dear Auditor Kelly:

You have submitted to us a fiscal note and fiscal note summary prepared pursuant to Section 116.175, RSMo Supp. 1997, relating to Senate Substitute #2 for House Joint Resolution No. 39, 89th General Assembly, Second Regular Session (1998). The fiscal note summary which you have submitted is as follows:

The estimated fiscal impact of this proposed measure on state and local governments is \$0.

Pursuant to Section 116.175, we approve the legal content and form of the fiscal note summary. Since our review of the fiscal note summary is mandated by statute, no action we take with respect to such review should be construed as an endorsement of the ballot measure or as the expression of any view regarding the objectives of its proponents.

Sincerely,

A handwritten signature in black ink, appearing to read "Jay Nixon", written over a horizontal line.

JEREMIAH W. (JAY) NIXON  
Attorney General



ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY

65102

July 23, 1998

JEREMIAH W. (JAY) NIXON  
ATTORNEY GENERAL

P.O. Box 899  
(573) 751-9321

OPINION LETTER NO. 148-98

The Honorable Rebecca McDowell Cook  
Missouri Secretary of State  
State Capitol Building  
Jefferson City, MO 65101

Dear Secretary Cook:

You have submitted to us a summary statement prepared pursuant to Section 116.160, RSMo Supp. 1997, relating to Senate Substitute #2 for House Joint Resolution No. 39, 89th General Assembly, Second Regular Session (1998). The summary statement which you have submitted is as follows:

Shall the Missouri Constitution be amended to permit organizations recognized as charitable or religious under federal law to sponsor raffles and sweepstakes and also permit the general assembly to provide standards and conditions to regulate or guarantee the awarding of prizes provided for in such raffles or sweepstakes?

Pursuant to Section 116.160, we approve the legal content and form of the proposed statement. Since our review of the statement is mandated by statute, no action we take with respect to such review should be construed as an endorsement of the ballot measure or as the expression of any view regarding the objectives of its proponents.

Sincerely,

A handwritten signature in dark ink, appearing to read "Jay Nixon", written over a horizontal line.

JEREMIAH W. (JAY) NIXON  
Attorney General

COPIES:  
PUBLIC RECORDS:  
RECORDS:  
SUNSHINE LAW:

If county records are on microfilm, the county has the ability to duplicate the microfilm, and a request is made for a copy of the records in the form of microfilm, the county is obligated

pursuant to Section 610.026, RSMo, as amended by Conference Committee Substitute No. 2 for Senate Substitute for Senate Committee Substitute for House Substitute for House Committee Substitute for House Bill No. 1095, 89th General Assembly, Second Regular Session (1998) to provide a copy of the records in the form of microfilm.

December 1, 1998

OPINION NO. 153-98

Mark Fisher  
Pike County Prosecuting Attorney  
115 West Main  
Bowling Green, MO 63334

Dear Mr. Fisher:

This opinion is in response to your questions asking:

Pursuant to Section 610.026.1, is the Circuit Clerk or Recorder of Deeds obligated in providing and furnishing copies of public records, to furnish anything beyond a paper copy of such documents? Specifically, if a party so requests, is the public entity obligated to provide records in the form of microfilm?

We understand that the records which are the subject of your inquiry are on microfilm and that the county has the ability to provide a duplicate of the microfilm.

Section 610.026, RSMo, as amended by Conference Committee Substitute No. 2 for Senate Substitute for Senate Committee Substitute for House Substitute for House Committee Substitute for House Bill No. 1095, 89th General Assembly, Second Regular Session (1998) (hereinafter referred to as "House Bill No. 1095) provides:

610.026. 1. Except as otherwise provided by law, each public governmental body shall provide access to and, upon request, furnish copies of public records subject to the following:

(1) Fees for copying public records shall not exceed the actual cost of document search and duplication. Upon request, the governmental body shall certify in writing that the actual cost of document search and duplication is fair, reasonable and does not exceed the actual cost incurred by the public governmental body. . . .

(2) Fees for providing access to public records maintained on computer facilities, recording tapes or discs, video tapes or films, pictures, slides, graphics, illustrations or similar audio or visual items or devices, shall include only the cost of copies, staff time required for making copies and programming, if necessary, and the disk or tape used for the duplication. [Emphasis added.]

\* \* \*

Section 610.011, RSMo 1994, sets forth the public policy relating to the Sunshine Law. Such section provides:

**610.011. Liberal construction of law to be public policy.--1.** It is the public policy of this state that meetings, records, votes, actions, and deliberations of public governmental bodies be open to the public unless otherwise provided by law. Sections 610.010 to 610.028 shall be liberally construed and their exceptions strictly construed to promote this public policy.

2. Except as otherwise provided by law, all public meetings of public governmental bodies shall be open to the public as set forth in section 610.020, all public records of public governmental bodies shall be open to the public for inspection and copying as set forth in sections 610.023 to 610.026, and all public votes of public governmental bodies shall be recorded as set forth in section 610.015.

Section 610.026.1(2) recognizes that public records may be maintained on other than paper. The section specifically refers to "computer facilities, recording tapes or discs, video tapes or films, pictures, slides, graphics, illustrations or similar audio or visual items or devices." Microfilm which is the subject of your questions would be included among the ways of maintaining public records listed in that section.

Section 610.026.1(2) further recognizes that records maintained on other than paper, such as microfilm, may be copied. It provides the fees "shall include only the cost of copies, staff time required for making copies and programming, if necessary, and the disk or tape used for the duplication." [Emphasis added.]

Section 610.010(2), RSMo, as amended in 1998 by House Bill No. 1095, defines "copying," as follows:

(2) "Copying", if requested by a member of the public, copies provided as detailed in section 610.026, if duplication equipment is available; [Emphasis added.]

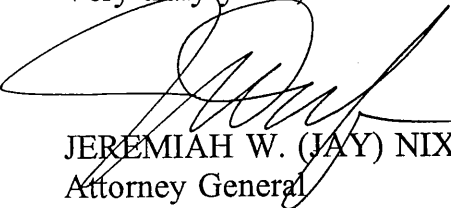
The 1998 amendment to Section 610.010(2) by House Bill No. 1095 inserted the word "copies" in lieu of the word "photocopies." When the legislature amends a statute, it is presumed to have intended the amendment to have some effect or to accomplish some legislative purpose. Bennett v. Director of Revenue, 889 S.W.2d 166, 169 (Mo. App. 1994). The 1998 amendment recognizes that the copy provided need not be a "photocopy" (paper copy) but that the copy may be in some other form. In the situation about which you are concerned, the request is for a copy in the form of microfilm.

Section 610.026.1 provides in the first sentence that "[e]xcept as otherwise provided by law, each public governmental body shall provide access to and, upon request, furnish copies of public records . . . ." [Emphasis added.] You have provided no facts which indicate that the "[e]xcept as otherwise provided by law" phrase applies to the records which are the subject of your inquiry. In the situation about which you inquire, the public records are on microfilm. Section 610.026.1 obligates the county to provide a copy of the records. The 1998 amendment to Section 610.010(2) by House Bill No. 1095 inserting the word "copies" in lieu of the word "photocopies" indicates that the copy provided need not be a paper copy "if duplication equipment is available." The county has the ability to provide a duplicate of the microfilm. Therefore, under the facts presented, we conclude the county is obligated to provide a copy of the microfilm records in the form of microfilm.

CONCLUSION

It is the opinion of this office that if county records are on microfilm, the county has the ability to duplicate the microfilm, and a request is made for a copy of the records in the form of microfilm, the county is obligated pursuant to Section 610.026, RSMo, as amended by Conference Committee Substitute No. 2 for Senate Substitute for Senate Committee Substitute for House Substitute for House Committee Substitute for House Bill No. 1095, 89th General Assembly, Second Regular Session (1998) to provide a copy of the records in the form of microfilm.

Very truly yours,



JEREMIAH W. (JAY) NIXON  
Attorney General

ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY

JEREMIAH W. (JAY) NIXON  
ATTORNEY GENERAL

65102

P.O. Box 899  
(573) 751-3321

November 19, 1998

OPINION LETTER NO. 168-98

The Honorable Rebecca McDowell Cook  
Missouri Secretary of State  
State Capitol Building  
Jefferson City, MO 65101

Dear Secretary Cook:

This opinion letter is in response to your request for our review under Section 116.332, RSMo Supp. 1997, for sufficiency as to form of an initiative petition proposing that the Missouri Constitution be amended by adding one new section to provide that persons elected to represent Missouri in the United States House of Representatives or Senate shall not support a governmental budget that spends in deficit. A copy of the initiative petition which you submitted to this office on November 9, 1998, is attached for reference.

We conclude the petition must be rejected as to form for the following reasons:

1. Section 116.040, RSMo Supp. 1997, provides that at the top of the petition there shall be a notice stating "It is a class A misdemeanor for anyone to sign any initiative petition with any name other than his own, or knowingly to sign his name more than once for the same measure for the same election, or to sign a petition when he knows he is not a registered voter." The petition does not contain this notice.

2. Section 116.040 provides that the petition shall have below the notice described in numbered subparagraph 1 above a heading "INITIATIVE PETITION." The petition does not contain this heading.

3. The paragraph commencing "Any person elected by the vote of the people of the state . . ." is underlined and appears after the enacting clause, but there are no words indicating that the proposed amendment is the addition of this paragraph to the Missouri Constitution. Words, such as "by adding one new section to read as follows," are needed after the enacting clause and



The Honorable Rebecca McDowell Cook

preceding the underlined paragraph to indicate the petition proposes the Constitution be amended by adding the underlined paragraph.

In addition to the reasons for rejection specified above, other concerns are apparent from our review of the petition.

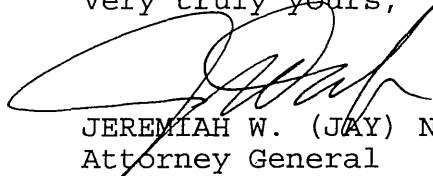
1. The line on the petition providing for the date of the signature of the affiant states "Subscribed and sworn to before me this \_\_\_\_ day of \_\_\_\_, A.D. 2000." It appears possible that signatures might be gathered during 1999 such that the affiant may be signing in 1999 rather than in 2000 as printed on the petition.

2. The proposed amendment appears both at the top of the first page of the petition and on a separate second page. The sentence commencing "We, the undersigned, registered voters of the state . . . " refers to the proposed amendment as "following proposed amendment," but one location where the proposed amendment appears precedes rather than follows this sentence.

3. The petition refers to the election "held on the 7 the day of November, 2000." It appears the intent is to refer to the "7th" day rather than the "7 the" day.

Because of our rejection of the form of the petition for the reasons stated above, we have not reviewed the petition to determine if additional deficiencies exist.

Very truly yours,



JEREMIAH W. (JAY) NIXON  
Attorney General

Enclosure



ATTORNEY GENERAL OF MISSOURI

JEREMIAH W. (JAY) NIXON  
ATTORNEY GENERAL

JEFFERSON CITY  
65102

P.O. Box 899  
(573) 751-3321

December 24, 1998

OPINION LETTER NO. 176-98

The Honorable Rebecca McDowell Cook  
Missouri Secretary of State  
State Capitol Building  
Jefferson City, MO 65101

Dear Secretary Cook:

This opinion letter is in response to your request for our review under Section 116.332, RSMo Supp. 1997, for sufficiency as to form of an initiative petition proposing that the Missouri Constitution be amended by adding one new section to provide that persons elected to represent Missouri in the United States House of Representatives or Senate shall not support a governmental budget that spends in deficit. A copy of the initiative petition which you submitted to this office on December 15, 1998, is attached for reference.

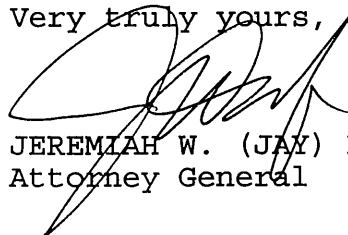
We conclude the petition must be rejected as to form. Section 116.040, RSMo Supp. 1997, sets forth the form of an initiative petition. The form set forth in Section 116.040 in the sentence commencing "[w]e, the undersigned, registered voters" contains the phrase "shall be submitted to the voters of the state of Missouri". The form submitted for review omits the words "the voters" such that the phrase in the form submitted for review reads "shall be submitted to of the state of Missouri".

Furthermore, Section 116.040 provides for the word "(Seal)" to appear near the bottom of the form following the words "Notary Public" so that the location for the notary public seal is designated by "Notary Public (Seal)". The form submitted for review does not contain the word "(Seal)" following the words "Notary Public".

The Honorable Rebecca McDowell Cook

Because of our rejection of the form of the petition for the reasons stated above, we have not reviewed the petition to determine if additional deficiencies exist.

Very truly yours,

A handwritten signature in black ink, appearing to read "Jay Nixon", is written over the typed name.

JEREMIAH W. (JAY) NIXON  
Attorney General

Enclosure